

Notice of Allowability	Application No.	Applicant(s)	
	10/718,955	JOHNSON ET AL.	
	Examiner	Art Unit	
	Sarae Bausch	1634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/03/2006.
2. ☒ The allowed claim(s) is/are 1-3,5-7,10-12,17 and 18.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*.Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____ 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>12/2006</u>. 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|---|---|

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Cynthia Rothschild on Dec 20, 2005.

2. Claims 1-3 and 17-18 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 5-7 and 10-12, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, claims 5-7 and 10-12 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement of groups II as set forth in the Office action mailed on 03/09/2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

The application has been amended as follows:

IN THE CLAIMS:

Claims 1, 2, 5 and 17 have been rewritten as follows:

1. An isolated nucleic acid molecule for detection of *H. capsulatum* selected from the group consisting of:

(a) a nucleic acid molecule comprising the sequence of SEQ ID NO: 1;

(b) a nucleic acid molecule comprising the sequence of the complement of SEQ ID NO: 1;

(c) a fragment of SEQ ID NO: 1, consisting of 21 or more consecutive nucleotides of SEQ ID NO: 1; and

(d) a fragment of the complement of SEQ ID NO: 1, consisting of 21 or more consecutive nucleotides of the complement of SEQ ID NO: 1, wherein the isolated nucleic acid molecule hybridizes to at least one *H. capsulatum* chitin synthase intron sequence.

2. The isolated nucleic acid molecule of claim 1, wherein said fragment comprises up to 25 consecutive nucleotides of SEQ ID NO: 1 or up to 25 consecutive nucleotides of the complement of SEQ ID NO: 1.

5. A method for detecting *H. capsulatum* in a sample, comprising the steps of:

(a) providing a sample; and

(b) assaying for the presence of DNA comprising a *H. capsulatum* chitin synthase gene in said sample, wherein the presence of said chitin synthase DNA indicates

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that the sample contains *H. capsulatum*, and wherein the step of assaying comprises exposing the sample to at least one isolated nucleic acid that hybridizes to at least one intron of the *H. capsulatum* chitin synthase 2 gene, and determining whether there is hybridization of the isolated nucleic acid to the sample, wherein a sample comprising *H. capsulatum* exhibits detectable hybridization and a sample lacking *H. capsulatum* does not exhibit hybridization. and wherein the isolated nucleic acid molecule for detection of *H. capsulatum* is selected from the group consisting of

- (i) a nucleic acid molecule comprising the sequence of SEQ ID NO: 1;
- (ii) a nucleic acid molecule comprising the sequence of the complement of SEQ ID NO: 1;
- (iii) a fragment of SEQ ID NO: 1 consisting of 21 or more consecutive nucleotides of SEQ ID NO: 1; and
- (iv) a fragment of the complement of SEQ ID NO: 1 consisting of 21 or more consecutive nucleotides of the complement of SEQ ID NO: 1, wherein the isolated nucleic acid molecule hybridizes to at least one *H. capsulatum* chitin synthase intron sequence.

17. A kit for detection of *H. capsulatum* comprising:

- (a) one or more containers comprising an isolated nucleic acid molecule selected from the group consisting of:
 - (i) a fragment of SEQ ID NO: 1 consisting of 21 or more consecutive nucleotides of SEQ ID NO: 1; or

(ii) the complement of a fragment of SEQ ID NO: 1, consisting of 21 or more consecutive nucleotides of the complement of SEQ ID NO: 1; and

(b) at least one separate container comprising an isolated nucleic acid molecule comprising a chitin synthase intron DNA selected from the group consisting of:

(i) a nucleic acid molecule comprising the sequence of SEQ ID NO: 1 or

(ii) a nucleic acid molecule comprising the sequence of the complement of SEQ ID NO: 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarae Bausch whose telephone number is (571) 272-2912. The examiner can normally be reached on M-F 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla can be reached on (571) 272-0735. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

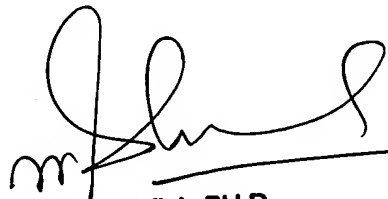
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.


RAM R. SHUKLA, PH.D.
SUPERVISORY PATENT EXAMINER

Sarae Bausch, PhD.
Examiner
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